

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RICHARD HARDIN

Claimant

VS.

PRISM, INC.

Respondent

AND

NATIONAL UNION FIRE INSURANCE COMPANY

Insurance Carrier

AND

KANSAS WORKERS COMPENSATION FUND

Docket No. 175,121

ORDER

Claimant appeals from an Award entered by Administrative Law Judge Robert H. Foerschler dated January 26, 1995. The Appeals Board heard oral argument April 18, 1995.

APPEARANCES

The claimant appeared by and through his attorney, Bertica Dominguez-Calbi of Kansas City, Missouri. The respondent and its insurance company appeared by and through their attorney, D'Ambra Howard of Overland Park, Kansas. The Kansas Workers Compensation Fund appeared by and through its attorney, Bruce Mayfield of Overland Park, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The Administrative Law Judge found that claimant had failed to establish Kansas jurisdiction and found further the claimant had failed to establish permanent disability. Claimant appeals both findings.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board finds:

(1) The Appeals Board agrees with the finding by the Administrative Law Judge that claimant has not established jurisdiction in Kansas.

Claimant seeks to recover benefits for an injury which occurred in Missouri. To invoke Kansas jurisdiction claimant must, therefore, establish that the principal place of employment was in Kansas or that the claimant's contract of employment was made within Kansas. K.S.A. 44-506 (Ensley). The record in this case does not indicate where claimant's employment contract was made. Claimant contends that the evidence establishes claimant's principal place of employment was within Kansas.

To establish claimant's principal place of employment was in Kansas, claimant points to a Kansas address for respondent listed on the emergency room records, an allegation in the E-1 form listing a Kansas address for respondent, evidence that the company doctors were in Kansas and, finally, evidence that claimant reported to respondent to obtain job assignments. The Appeals Board finds that evidence does not meet claimant's burden. The Kansas Court of Appeals indicated in Knelson v. Meadowlanders, Inc., 11 Kan. App. 2d 696, 732 P.2d 808 (1987) that the Legislature intended for the employee's principal place of employment to be the basis for jurisdiction. At most, the evidence presented here indicates respondent had a business address in Kansas. Nothing in the records establishes claimant's principal place of employment.

Claimant worked for Prism, a pest control business, both as a service technician and as a salesperson. He was injured when he fell from a ladder in a restaurant in Missouri. The record indicates that he picked up service tickets a week before the job. Although it might be a fair inference from the evidence that he picked those up at Prism, nothing in the record indicates Prism had only one business location. Even a conclusion that he picked them up at Prism does not, therefore, indicate in what state he may have picked up the service tickets. The finding by the Administrative Law Judge that claimant has not established Kansas jurisdiction is affirmed.

Having found the evidence does not establish jurisdiction in Kansas, the Appeals Board considers it unnecessary to review the finding that claimant has not established permanent disability.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Robert H. Foerschler on January 26, 1995, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Bertica Dominguez-Calbi, Kansas City, MO
D'Ambra Howard, Overland Park, KS
Bruce Mayfield, Overland Park, KS
Robert H. Foerschler, Administrative Law Judge
George Gomez, Director